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SIPDIS

SENSITIVE

TREASURY FOR OASIA (LEICHTER AND MILLS)

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TAGS: [ECON](#) [TU](#) [ECIN](#)

SUBJECT: TURKISH COMPETITION POLICY - EU ACCESSION REQUIRES
BETTER ALIGNMENT OF THEORY AND PRACTICE

11. (SBU) Summary. According to officials of the Representation of the European Commission to Turkey (EC Representation), over the past six years the Turkish Competition Authority (CA) has made good progress in those few sectors where it has chosen to focus. However, many sectors remain concentrated and non-competitive. Much work thus remains to be done before Turkey's economy can be considered fully in compliance with the EU's strict competition policies. Of particular concern to the EC Representation are state aids, and the fact that Parliament continues to enact laws that contradict the Customs Union treaty. End summary.

Background

12. (U) Turkey does not have a long-standing culture of market competition. The idea of a free market economy was first introduced in the 1982 constitution. However, only with the 1994 Competition Law were statutory restrictions placed on anti-competitive practices, and not until the CA was established in 1997 did an effective mechanism exist to enforce the law. (Turkish law permits private suits, but these are quite rare.) Thus, until quite recently, price fixing, market sharing and monopolies were both widespread and widely accepted.

13. (SBU) The CA consists of an eleven member Board, which adjudicates cases, and a professional staff of 120 persons, which prepares and presents cases. The Board is appointed by the Council of Ministers following a complicated nominating process. It is formally (and, apparently, practically) independent. Appeals from Board decisions are taken to the Council of State (the supreme administrative court). The CA staff is uniformly considered well-trained and professional. However, the Board and Council have received mixed reviews, since not all of their members are considered well-versed in either the Competition Law or competition theory.

14. (U) From CA's organization in 1997 through June 2003, a total of 2218 cases were filed, of which 1822 were resolved. However, most cases are appealed, and the appellate process has been quite slow. (New legislation is expected to help solve this problem.) In 2003, the CA imposed a record USD 20 million fine on the mobile phone operators Turkcell and Telsim, due to their refusal to provide nation-wide roaming services to competitors.

15. (SBU) The Competition Law meets EU standards and the EC Representation is generally happy with the work of the CA. Problems nonetheless remain, some of which may be serious enough to affect the start of EU accession negotiations.

Private Sector Oversight

16. (SBU) According to the EC Representation, the CA has focused mainly on the cement and telecommunications industries. Many other &crucial8 sectors remain concentrated (autos, white goods, electrical goods, alcohol/tobacco, banking, insurance and media), and since Turkey has not adopted a long-range competition policy, are likely to remain so.

Regulated Sectors

17. (SBU) The EC Representation wants the relationship between the Competition Authority and regulatory authorities to be formalized, since oversight functions are now shared. For instance, BRSA has sole authority to approve mergers between banks having up to a 20% market share. The CA is negotiating protocols with the various regulatory authorities, and the EC Representation acknowledges that progress is being made.

Procurement

18. (SBU) The EC Representation says that Turkey's procurement policies are not fully aligned with the acquis,⁸ since Turkish companies are given a 15% price preference, and the timing for international tenders is much shorter than for domestic tenders. The CA experts Econoff consulted, by contrast, do not think current procurement practices present a problem. In any event, while the CA's opinion on a proposed tender must be sought, it is non-binding and is usually ignored. (Note: Turkey has recently established an independent body to review all public procurements. A World Bank official told Econoff that the body has demonstrated real independence⁸ by rejecting some transactions. End Note.)

Monopolies

19. (SBU) The GOT's slow pace of privatization worries the EC Representation, since under the Customs Union Turkey is obligated to liberalize its public monopolies. Moreover, privatization sometimes merely perpetuates in private hands the monopoly previously held by the state. Indeed, from time to time such has been GOT's professed policy, since extension of monopoly privileges to the purchaser increases the value of the SEE. For instance, recent legislation that was intended to benefit the purchaser of Tekel's alcohol unit imposes import restrictions that, much to the EC Representation's displeasure, violates the Customs Union.

110. (SBU) The EC Representation also complains that Parliament continues to enact statutes that extend monopoly rights to political favorites. Since the Competition Act, as a general statute, is subordinate to special acts, the CA cannot stem this tide. Surprisingly, a CA expert specifically denied that this was an ongoing problem.

State Aids

111. (SBU) The European Commission expects candidate countries to establish an independent monitoring authority to regulate state aids. (Article 92 of the Rome Treaty forbids state aid which distorts or threatens to distort competition.⁸) Rather than give the CA authority over state aids, GOT plans to assign this function to the State Planning Organization (SPO), which is not an independent body. Accordingly, the EC Representation says it will review each of the SPO's decisions very closely, and expects the SPO to reject some state aids, to show its operational independence.⁸ This is an urgent priority⁸ for the EU, and if not handled properly could be an impediment to the institution of accession negotiations.

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